UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF TEXAS HOUSTON DIVISION

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X-TRA LIGHT MFG. INC. a/k/a and/or d/b/a X-TRA LIGHT MANUFACTURING PARTNERSHIP, LTD., a Texas corporation,

Plaintiff,

v.

ACUITY BRANDS, INC., and ACUITY LIGHT GROUP, INC.,

Defendants.

CIVIL ACTION NO. H-04-1413

MEMORANDUM AND ORDER

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Pending before the Court is Defendants' request in their Motion for a Pretrial Status Conference (Doc. No. 109) to introduce newly discovered prior art at the trial of this case. Federal Rule of Civil Procedure 37(c)(1) precludes the introduction of untimely disclosed evidence at trial unless the untimely disclosure was justified or admission of the evidence would be harmless.

While this Court does not doubt that Defendants exercised diligence in searching for relevant prior art during the discovery period, there is a risk inherent in all cases that, despite best efforts, relevant material will be discovered after the close of the discovery period. Nonetheless, limitations on the discovery period must be imposed or cases could never be finally resolved.

The Court finds that Plaintiff would suffer prejudice if prior art discovered a year and a half after the close of the discovery period, and less than a month before trial, were introduced. At this late date, Plaintiff will not be able to conduct additional depositions of Defendants' witnesses regarding this new prior art, nor will it be able to undertake its own thorough

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investigation of the material. Thus, Defendants' request to introduce the newly discovered prior art at trial is **DENIED**.

IT IS SO ORDERED.

SIGNED this 22nd day of January, 2007.

KEITH P. ELLISON

UNITED STATES DISTRICT JUDGE

TO INSURE PROPER NOTICE, EACH PARTY WHO RECEIVES THIS ORDER SHALL FORWARD A COPY OF IT TO EVERY OTHER PARTY AND AFFECTED NON-PARTY EVEN THOUGH THEY MAY HAVE BEEN SENT ONE BY THE COURT